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UNITED STATES DEPARTMENT OF AGRICULTURE
Food Distribution Administration
Washington, D. C.

April 2, 1943

DIRECTOR'S MEMORANDUM NO. 53

Procedure for the Issuance of Food Priorities Under
Food Distribution Regulation No. 1

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U. S. DEPARTMENT OF AGRICULTURE

The following procedure will govern the administration of Food Distribution Regulation 1:

1. Major Ralph W. Olmstead, Deputy Director, and Mr. J. S. Russell, Deputy Director, are hereby authorized, subject to the qualifications below, to direct and to be responsible for the issuance of priorities as follows:

(a) Major Olmstead shall direct issuance of priorities to (1) the Army, Navy, Marine Corps, and Coast Guard of the United States, (2) War Shipping Administration, (3) Maritime Commission, (4) approved persons feeding under contract, (directly or indirectly) personnel of the Army, Navy, Coast Guard, or Marine Corps of the United States, and (5) the Food Distribution Administration procurement programs. For this purpose, he will be assisted by a committee consisting of representatives of the Army, Navy, and Lend-Lease. Mr. Russell shall be an ex-officio member of this committee.

(b) Mr. Russell shall direct issuance of priorities to persons other than those coming under the scope of Major Olmstead. This includes all basic civilian uses such as defense plants, Red Cross (including prisoner of war parcels) and crews of ships, except where food is purchased by United States Maritime Commission or the War Shipping Administration. For this purpose, he will be assisted by a committee consisting of a representative from OPA, the Chief of the Civilian Food Requirements Branch, and the Chief of the Civilian Programs Branch. Major Olmstead shall be an ex-officio member of this committee.

2. As outlined above, each Deputy Director has authority over the issuance of priorities subject to his direction where such priorities apply to individual transactions. All authorizations permitting the blanket use of a priority on a commodity for which approval must be obtained, such as the purchase of a set-aside food, are to be approved by the Inter-Agency Food Procurement Committee and the Director, Food Distribution Administration.

3. The following general limitations are to apply to the issuance of all priority certificates:

(a) The quantity of food to which a priority is assigned must be within the allocation approved by the Secretary of Agriculture; or, in the event of an emergency request, within an allocation approved by the Director of the Food Distribution Administration.

(b) The Office of Price Administration must concur in the issuance of any priority rating on a rationed food to the civilian group under the direction of Mr. Russell.

(c) Priority ratings on any quantity of foods set aside under orders issued by the FDA are to be issued only to agencies designated in the set-aside orders.

4. Priority certificates are to be issued to claimants under the supervision of Major Olmstead on the basis of formal applications presented by the claimant agency, and reviewed by the sub-committee, or the full committee wherever necessary.

5. Priority certificates are to be issued to the civilian claimants under the supervision of Mr. Russell, in accordance with the following procedure:

All persons designated under Section 1 (b) shall file applications for food priorities with the nearest regional office of FDA. Immediately upon the receipt of the application for a food priority, the regional administrator will make an investigation in order to verify the facts contained in the priority application. As formal application is not prescribed at this time, such application may be in memorandum form, and shall contain all essential data, such as quantity, period of time, and number of persons to be affected. He will also consult with the appropriate food committees within the region in order to determine whether the food shortage may be alleviated by means other than use of the priority. If, in the opinion of the regional administrator, the facts elicited by this investigation and discussion with these committees do not warrant the granting of a food priority, he shall have the authority to deny the request for a priority. All copies of such action must be forwarded to the office of Deputy Director Russell for his information. Applicants for relief may appeal the decision of the regional administrator to the Deputy Director.

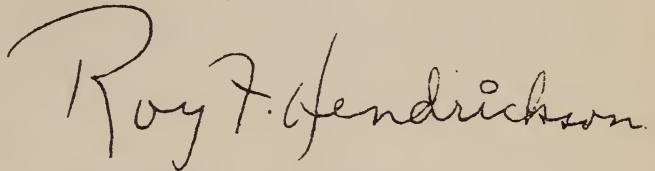
However, where the facts, in the opinion of the regional administrator, warrant the granting of relief, he shall forward the application to Washington together with his recommendation and a brief statement of facts based on his investigation. In emergency cases, a summary of the application and investigation may be submitted by telegraph, and the application and related data submitted in the regular manner. It is to be understood that his action in this respect will not be that of an appellant, but rather that of assisting the Washington office in a final determination of the case.

Upon receipt in Washington, the application will be forwarded by Mr. Russell to the Chief of the Civilian Programs Branch. It shall be the responsibility of the Chief of this Branch or an appropriately designated alternate to obtain the necessary clearance from the Civilian Food Requirements Branch and the appropriate commodity branch having jurisdiction over the food for which a priority is requested. Upon obtaining these clearances, the Chief of the Civilian Programs Branch will prepare for the signature of Deputy Director Russell a brief memorandum (one page) approving or denying the request for a food priority, and indicating the reasons therefor. Priorities in connection with production inputs shall be cleared through the Food Production Administration by Mr. Russell prior to approval.

After approval by Mr. Russell and the committee assisting him, a telegram will be sent to the office of the appropriate regional administrator authorizing the issuance of a priority certificate and assigning a number to that certificate. The telegraphic authorization will indicate whether or not the priority certificate can be extended beyond the first supplier. Priority certificates may not be issued until a number has been assigned by the Washington office.

The priority certificate shall be issued over the facsimile signature of the Director and the countersignature of the regional director.

6. Each priority certificate shall be issued in the form attached.
7. The responsibility for coordinating forms, records, and reports, is vested in Deputy Director Major Olmstead.

A handwritten signature in dark ink, reading "Roy F. Hendrickson". The signature is written in a cursive, flowing style with a large initial "R".

Director

Attachment

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UNITED STATES DEPARTMENT OF AGRICULTURE
Food Distribution Administration
Washington, D. C.

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MAY 25 1943

April 15, 1943

U. S. DEPARTMENT OF AGRICULTURE

DIRECTOR'S MEMORANDUM NO. 52

Supplement 1

Procedure for the Use of Food Priorities by the Commodity
Branches Under Food Distribution Regulation No. 1

Food Distribution Regulation No. 1 (Food Priorities), issued on March 6, 1943, by the Secretary, supersedes all Priorities regulations of the War Production Board including Priorities Regulation No. 1, the regulation under which priorities previously had been issued, insofar as they have concerned food. Director's Memorandum No. 52, dated April 2, 1943, has delegated to Major Ralph W. Olmstead, Deputy Director in charge of Procurement Coordination, the responsibility for the issuance of food priorities to the following: (1) the Army, Navy, Marine Corps, and Coast Guard of the United States, (2) the War Shipping Administration, (3) the Maritime Commission, (4) approved persons feeding under contract (directly or indirectly) personnel of the Army, the Navy, Coast Guard, or Marine Corps of the United States, and (5) the Food Distribution Administration procurement programs. For this purpose he will be assisted by a committee consisting of a representative of the Army, Navy and Lend-Lease. Mr. J. S. Russell, Deputy Director in charge of the civilian group of branches, will be ex officio member of this committee.

The purpose of this memorandum is to outline the procedure under Food Distribution Regulation No. 1 by which the commodity branches are to apply for and use food priorities in connection with Food Distribution Administration procurement programs. It will also outline the responsibility of vendors under the Regulation, and other pertinent material in connection with the use of food priorities.

1. Use of priorities for Lend-Lease purchases of foods which are not subject to FDA set-aside or allocation orders, or rationing regulations of OPA

The priorities regulation gives FDA the authority to apply an automatic rating of FR-10 on all Lend-Lease purchases of foods which are not subject to FDA set-aside or allocation orders, or OPA rationing regulations. While application of this automatic food priority rating does not require any advance approval, the various government agencies have agreed under certain circumstances not to use this rating on certain important foods without consulting the Deputy Director in charge of Procurement Coordination. In addition, the Secretary has requested FDA to obtain prior approval from the Food Production Administration or Commodity Credit Corporation on all foods which are wholly or in part used as production inputs. Both these limitations, which are discussed in Sections I (b)

and VI, should be considered by branch chiefs before using the automatic rating. The procedure for applying this automatic rating of FR-10 is as follows:

(a) Where vendors voluntarily supply the entire amount called for under a purchase announcement. Use of the priority rating under these conditions merely involves applying the following statement on the purchase order or contract:

"This purchase order (contract) carries an automatic priority rating of FR-10 under the terms of paragraph (c) of Food Distribution Regulation No. 1. That regulation requires that this purchase order (contract) be given priority in acceptance and delivery over other purchase orders or contracts without priority ratings. This priority rating may not be extended to another supplier by the person filling this order."

The purpose of using a priority in this instance is to guarantee delivery on the specified date. Consequently, each order should specify clearly the delivery date for the commodity.

(b) Where vendors do not willingly supply the entire amount called for under a purchase announcement. This use of a priority under these circumstances is the type of application which government agencies voluntarily have agreed to clear with the Deputy Director in charge of Procurement Coordination before the rating is used. Consequently, whenever this situation arises, the branch chief should forward to the Deputy Director in charge of Procurement Coordination a memorandum indicating why the action is necessary and how the purchase is to be prorated among the various suppliers. Such a distribution of purchases among suppliers is necessary in order to distribute FDA orders fairly among suppliers and to prevent disruption of civilian distribution. The Deputy Director in charge of Procurement Coordination will clear this request with other agencies and notify the commodity branch chief.

A priority is applied under these circumstances by addressing a letter or purchase order to each vendor specifying the following:

1. The amount of the commodity ordered, including pertinent information as to grade, type, variety.
2. The delivery date and delivery instructions.
3. Packaging instructions.
4. The order number.
5. An offer to pay the ceiling price of the supplier.
6. The clause described above in section (a).

7. A statement that this is a purchase order, not a requisition.

One copy of each group of these letters should be cleared with the Solicitor's Office. Letters should be sent by registered mail or handed to the firm by a representative of FDA.

(c) Existing contracts for Lend-Lease purchases of foods not subject to FDA set-aside or allocation orders, or OPA rationing regulations. These contracts bear an automatic rating of FR-10 and it is not necessary under the regulation to notify suppliers. However, in order to make sure, the commodity branch chief should notify all persons holding contracts that these bear a rating of FR-10.

II. Use of priorities on other FDA purchases of food not subject to FDA set-aside or allocation orders, or OPA rationing regulations.

Purchases of this type do not carry an automatic rating of FR-10 under the regulation. However, the Director, with the approval of the Inter-Agency Food Procurement Committee, has authorized the commodity branch chiefs to apply a rating of FR-10 on these purchases. This action was necessary because of our practice of making most purchases in the General Commodities Program, so that food can be diverted to any use readily.

In applying a priority on these foods, the procedure prescribed under Section I should be used. However, this clause should be placed in all purchase contracts or orders:

"This purchase order (contract) carries a rating of FR-10 under authorization granted by the Director, Food Distribution Administration, under Food Distribution Regulation No. 1. That regulation requires that this purchase order (contract) be given priority in acceptance and delivery over other purchase orders or contracts without priority ratings. The supplier who fills this order may not extend the rating to any other supplier. This rating does not expire until (insert date)."

III. Use of priorities on purchases of foods which are subject to FDA set-aside or allocation orders or OPA ration orders.

Priorities can be applied to foods in this category only after special permission has been obtained from the Deputy Director in charge of Procurement Coordination. This special provision was placed in the order because these foods already are subject to detailed government control, and it was desirable not to impose any priorities in addition, except in an emergency. Foods in this special category now are as follows:

Rationed: Butter; canned fish, shell-fish, and fish products; canned fruits; canned fruit juices (1 gallon and under); canned baby foods (excluding milk and cereal products); canned vegetables (including beans but not spaghetti); canned vegetable juices (1 gallon and under); cheeses (except soft and perishable cheeses); coffee; cooking and salad oils; dried fruits; dry peas and beans; dehydrated soups; fats and oils (except olive oil and salad dressing); frozen fruits (10 pounds and under); frozen vegetables (10 pounds and under); lard; lentils; meats (including sausage and bouillon cubes, beef extracts); margarine; shortening; sugar; tomato ketchup and chili sauce.

Set-aside: Creamery butter; American or Cheddar cheese; dried whole eggs (spray process); lard and rendered pork fat; rice; spray process dry skim milk; canned salmon, mackerel, sea herring, pilchards, tuna, shrimp; canned fruits and fruit juices; canned vegetables and vegetable juices; dried fruits; meats; dehydrated vegetables; concentrated citrus juices; eggs - storage.

In order to obtain permission to use a priority on these foods, the commodity branch chief should file an application with the Deputy Director in charge of Procurement Coordination in the form of a signed memorandum specifying the following:

1. Commodity, type, and grade to be purchased.
2. Amount and period of purchase
3. Purpose for which commodity is to be used.
4. Reason for requesting the priority.
5. Method of application of priorities so as not to interfere with contracts on set-aside foods held by other governmental agencies named in the order.

Since this application must be passed on by a subcommittee of the Inter-Agency Food Procurement Committee, an interval of at least 2 days should be allowed between the receipt of the application and the reply. In case of emergency, an application can be granted within 24 hours. The Deputy Director in charge of Procurement Coordination will notify the branch chief of the action taken and issue a certificate permitting the priority to be used.

In applying a priority after a certificate is obtained, the procedure is exactly the same as that specified above for I (a) or I (b) depending on the circumstances. However, the purchase order should carry this clause instead of that specified under I:

"This purchase order (contract) bears a priority rating of FR ___ under authorization No. ___ issued to (insert name) by the Director of Food Distribution. Delivery on this order (contract) must be made in accordance with the provisions of Food Distribution Regulation No. 1. The purchaser certifies that this order is within the quantity authorized and that the authorization does not expire until (insert date). The person filling this order may not extend the rating to any other supplier."

IV. Use of priorities on foods under allocation orders.

At the present time only certain fats and oils are under FDA allocation orders, orders under which the Director periodically allocates the available supply to individual users. This special type of allocation order should not be confused with the allocations made by the Secretary under the allocations procedure. Foods now under complete allocation include oiticica oil (including cacamanche and laceta), castor oil, mustard seed oil, rapeseed oil, sperm oil, tuna oil, and glycerine. Certain edible oils (corn, peanut, soybean, and cottonseed) will be added shortly.

Priorities cannot be used on foods of this type without special permission due to the desire not to interfere with the allocations procedure. However, in the event of an emergency, the Deputy Director in charge of Procurement Coordination may authorize use of a priority under the procedure set up in Section III above.

V. Use of priority ratings higher than FR-10.

The procedure for obtaining and using the rating is the same as that required under Section III.

VI. Use of priority ratings on foods which are production input items.

The Secretary has requested the FDA to clear all priorities applied to production input items with the FPA or the CCC. On all of these items, branch chiefs should address a memorandum to the Deputy Director in charge of Procurement Coordination requesting permission to use this rating. The Deputy Director in charge of Procurement Coordination will clear the application with FPA or CCC and notify the commodity branch. A list of production input items will be issued shortly.

VII. Extension of priority ratings.

Under the terms of Food Distribution Regulation No. 1, the FDA is permitted to allow a supplier to extend the priority rating placed on a delivery made by him to FDA without specific permission from the Deputy Director in charge of Procurement Coordination. An extension of a priority makes it possible for the supplier (the person from whom the commodity is to be purchased) to use the priority in obtaining food or ingredients needed to fill the order or to replenish his stocks. Because of the difficulties arising from an improper extension, we are requesting

that no agent of FDA should ever permit the extension of a rating without prior clearance with the Deputy Director in charge of Procurement Coordination. It should be noted that the regulation specifically prohibits the extension of a priority rating to nonfood items, and consequently the extension should not be used for this purpose.

The commodity branch, after it has obtained permission, can extend a priority rating by using the following language on its purchase order or contract:

"This priority rating of FR (insert number) may be extended by the supplier filling this order to one (insert type of supplier) to the extent necessary to obtain (insert product) needed to fill this order (contract), in accordance with the provisions of Food Distribution Regulation No. 1. This authorization of extension shall expire unless used before (insert date). In extending the priority rating, the supplier filling the order must make the proper certification and forward a copy of each purchase order used in extending the rating to FDA within 15 days after the extension is placed."

VIII. Responsibility of suppliers under a priority rating system.

Once an order bearing a priority rating has been placed with a supplier, he is required to fill this order before filling any other order with a lower or no priority rating. The regulation permits only three valid excuses for failure to accept an order carrying a priority. These are:

1. Commitments on orders bearing a higher rating.
2. Refusal of the buyer to meet regular established prices or conditions of sale. As far as FDA is concerned, an offer at ceiling prices is a regular established price.
3. The order is of a kind which is not usually sold by the person and which he cannot produce without alteration or addition to his facilities unless he has a supply of such food sufficient to fill such orders.

In filling orders, vendors are required to fill those with the highest priority rating first. If two orders bear the same rating, the order placed first gets preference. If two orders are placed on the same date and have the same rating, the order calling for the earliest delivery has preference. These facts should be noted by the branches in applying priorities.

IX. Enforcement of priorities.

If at any time any vendor improperly rejects a rated order or improperly defers delivery, the branch chief should immediately report to the

Deputy Director in charge of Procurement Coordination. Under special circumstances, the branch chief, after consulting the Transportation and Warehousing Branch, may alter delivery terms of a contract if the vendor has a valid excuse. Under other circumstances, the branch chief should report a violation of a priority to the Deputy Director in charge of Procurement Coordination.

In reporting a violation, the branch chief should submit to the Deputy Director in charge of Procurement Coordination a memorandum explaining the circumstances. Wherever possible, the branch should recommend the type of sanction that should be used. A number of different alternatives are possible, but the most important of these are as follows:

1. Criminal prosecution.
2. The deprivation of all rights to obtain from WPB priorities on scarce materials.
3. Injunction to require delivery.
4. A requisition of the property.

The Deputy Director in charge of Procurement Coordination will be responsible for having each case investigated further and for determining the type of action to be taken. This action usually will be taken in co-operation with the Compliance Branch and the commodity branch.

X. Reports and records.

The order requires every person using priorities to maintain certain records and reports. Branches can do this by keeping copies of purchase orders and contracts and any certificates obtained from the Deputy Director in charge of Procurement Coordination. From time to time the Deputy Director in charge of Procurement Coordination may call on the branch for reports and they should be in a position to supply these promptly.

XI. Administration of regulation.

All questions regarding the use of priorities should be addressed to Otie M. Reed, Assistant Deputy Director on Procurement, Room 301-W.

Roy F. Hendrickson

